

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ethan Waterman	Team: Squad #10	CCRB Case #: 202007629	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 11/02/2020 6:20 AM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 40	18 Mo. SOL 5/2/2022	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 11/02/2020 8:03 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/19/2020 10:57 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Michael Thomas	03296	935840	040 PCT
2. POM Michael David	8293	954701	040 PCT
3. POM Terrence Saunders	13806	962088	040 PCT
4. POM Andrew Marcus	12832	961912	040 PCT
5. POM Paul Barth	15418	960208	040 PCT
6. PO Adora Mojicabarry	04922	949348	040 PCT
7. PO Sinaka Javorovac	31751	968515	040 PCT
8. PO Peter Dinsmore	16548	957549	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael David	Abuse: Police Officer Michael David entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POM Andrew Marcus	Abuse: Police Officer Andrew Marcus entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C.POM Paul Barth	Abuse: Police Officer Paul Barth entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.POM Terrence Saunders	Abuse: Police Officer Terrence Saunders entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
E.PO Sinaka Javorovac	Abuse: Police Officer Sinaka Javorovac entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
F.PO Peter Dinsmore	Abuse: Police Officer Peter Dinsmore entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
G.PO Adora Mojicabarry	Force: Police Officer Adora Mojicabarry used physical force against § 87(2)(b)	§ 87(2)(b)
H.POM Paul Barth	Force: Police Officer Paul Barth used physical force against § 87(2)(b)	§ 87(2)(b)
I.SGT Michael Thomas	Abuse: Sergeant Michael Thomas threatened to arrest Individuals.	§ 87(2)(b)
J.SGT Michael Thomas	Abuse: Sergeant Michael Thomas threatened to arrest § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
K.SGT Michael Thomas	Abuse: Sergeant Michael Thomas threatened to notify Administration for Children's Services.	

Case Summary

On November 2, 2020, § 87(2)(b) called the Internal Affairs Bureau and filed this complaint. The CCRB received this complaint on November 19, 2020. This complaint was initially assigned to Investigator Rob Bryan and was reassigned to Investigator Ethan Waterman on July 12, 2022.

At approximately 6:20 a.m. on November 2, 2020, § 87(2)(b) was asleep with her girlfriend, § 87(2)(b) inside § 87(2)(b) § 87(2)(b) in the Bronx. § 87(2)(b)'s sister, § 87(2)(b) arrived with Police Officer Michael David, Police Officer Andrew Marcus, Police Officer Paul Barth, Police Officer Terrence Saunders, Police Officer Sinaka Javorovac, and Police Officer Peter Dinsmore (all of the 40th Precinct). The group entered the apartment, as did Sergeant Michael Thomas and Police Officer Adora Mojicabarry (both also of the 40th Precinct) when they later arrived (**Allegations A, B, C, D, E, and F, Abuse of Authority: Entry of Premises**, § 87(2)(g)). The officers placed § 87(2)(b) under arrest for violating an order of protection. PO Barth and PO Mojicabarry pulled § 87(2)(b) away from § 87(2)(b) as the latter was handcuffed (**Allegations G and H, Force: Physical Force**, § 87(2)(g)). Sgt. Thomas threatened to arrest everyone in the apartment, then, specifically, threatened to arrest § 87(2)(b) (**Allegations I and J, Abuse of Authority: Threat of Arrest**, § 87(2)(g)) and threatened to notify ACS (**Allegation K, Abuse of Authority: Threat to Notify ACS**, § 87(2)(g)). § 87(2)(b) was arrested for criminal contempt in the first degree and harassment in the second degree (**BR 01**). § 87(2)(b)

The investigation received body-worn camera footage from the above-listed officers (**BR 03-10**). The relevant aspects of this footage shall be discussed in further detail below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael David entered § 87(2)(b) in the Bronx.

Allegation (B) Abuse of Authority: Police Officer Andrew Marcus entered § 87(2)(b) in the Bronx

Allegation (C) Abuse of Authority: Police Officer Paul Barth entered § 87(2)(b) in the Bronx.

Allegation (D) Abuse of Authority: Police Officer Terrence Saunders entered § 87(2)(b) in the Bronx.

Allegation (E) Abuse of Authority: Police Officer Sinaka Javorovac entered § 87(2)(b) in the Bronx.

Allegation (F) Abuse of Authority: Police Officer Peter Dinsmore entered § 87(2)(b) in the Bronx.

It is undisputed the above-listed officers entered § 87(2)(b) § 87(2)(b).

In her CCRB interview (**BR 11**), § 87(2)(b) said that on the morning of November 2, 2020, she was asleep with her three-year-old son, § 87(2)(b) at the home of her girlfriend § 87(2)(b) located at § 87(2)(b) § 87(2)(b) in the Bronx. § 87(2)(b) did not live at the apartment but sometimes stayed there. § 87(2)(b)'s brother, § 87(2)(b) called § 87(2)(b) and told § 87(2)(b) who had answered § 87(2)(b)'s cellphone, that he saw their adopted sister, § 87(2)(b) standing outside the building. At the time of the incident, § 87(2)(b) and § 87(2)(b) both had Orders of Protection against § 87(2)(b) who did not reside at the apartment. At approximately 5:00 a.m., PO David, PO Barth, PO Saunders, PO Marcus, and PO Mojicabarry entered the apartment, though they did not enter any rooms during the incident. § 87(2)(b) asked if the officers had a warrant, and PO David replied they did not and that they did not need one. § 87(2)(b) asked how the officers gained entry into the apartment, and a white officer, possibly PO David, said, "none of your business." § 87(2)(b) provided PO Marcus with her ID,

which confirmed her address as the apartment, along with rent statements and bills that had her name and address on them.

In her CCRB interview (**BR 12**), § 87(2)(b) said that around 6:15 a.m. on November 2, 2020, she called 911 to report that her sister, § 87(2)(b) was in § 87(2)(b) apartment. § 87(2)(b) noted that she had two apartments – one in Harlem and § 87(2)(b) – and that she roughly split her time equally between the two. § 87(2)(b) learned that § 87(2)(b) was in the apartment from her brother, § 87(2)(b) who also lived at § 87(2)(b). At approximately 6:24 a.m., officers arrived and § 87(2)(b) let them in with a key.

The investigation was unable to contact § 87(2)(b).

Per PO Marcus' BWC (**BR 05**), he exits his vehicle at the 01:00 timestamp and approaches § 87(2)(b) with other officers – § 87(2)(b) stands in the vestibule of § 87(2)(b). She tells them she has an order of protection against someone in her apartment, and at 1:35, PO Marcus suggests they step inside. § 87(2)(b) holds the door open for the officers and they continue to talk to her in the vestibule. At 1:58, PO Marcus asks who is in the apartment and she replies, "My sister." PO Marcus asks for the order of protection, and at 2:15 she shows him a copy of the order of protection on her phone. At 2:48, PO Marcus asks her if she owns the apartment and she says that she does, along with another apartment. At 2:56, § 87(2)(b) tells PO Marcus her name and hands her a copy of her passport.

At 7:42, § 87(2)(b) and the officers take the elevator upstairs to the apartment. At 9:06, § 87(2)(b) opens the apartment door with her keys and the officers follow her inside. At 9:15, PO Marcus says, "§ 87(2)(b)?" § 87(2)(b) comes out into the living room. At 9:28, PO Marcus asks § 87(2)(b) to confirm the woman inside is § 87(2)(b), which she does. At 12:54, PO Marcus tells § 87(2)(b) that he has seen paperwork showing that she violated an order of protection. At 14:12, § 87(2)(b) shows PO Marcus her ID and tells her that she lives there and § 87(2)(b) does not. At 14:30, § 87(2)(b) tells § 87(2)(b) "Shut the fuck up before I really violate you," at which point § 87(2)(b) walks back into the hallway. At 15:20, § 87(2)(b) shows PO Marcus a document on her phone to prove that § 87(2)(b) had been served with the order of protection.

Per Sgt. Thomas' BWC (**BR 10**), at the 04:10 timestamp, § 87(2)(b) says that § 87(2)(b)'s father had passed away and left the apartment to § 87(2)(b). § 87(2)(b) says that § 87(2)(b) does not live there. § 87(2)(b) tells Sgt. Thomas that § 87(2)(b) had deceived their brother, § 87(2)(b) into giving keys to the apartment while § 87(2)(b) was away. § 87(2)(b) says that § 87(2)(b) is autistic. § 87(2)(b) then changed the locks and stole § 87(2)(b)'s property. § 87(2)(b) says that she is the owner of the unit and pays all the bills; § 87(2)(b) repeats that § 87(2)(b) does not live there.

At the 21:00 timestamp, a woman in a purple jacket speaks to officers. The woman says that § 87(2)(b) does not live in the apartment and does not know how § 87(2)(b) got keys to access the apartment. The woman ultimately tells Sgt. Thomas that § 87(2)(b) the brother of § 87(2)(b) and § 87(2)(b) is the one who lives at the apartment. At the 34:45 timestamp, § 87(2)(b) arrives at the scene and identifies himself as the sole individual who owns the apartment.

At no point in BWCs do § 87(2)(b) or § 87(2)(b) ask officers to leave the apartment.

In his CCRB statement (**BR 13**), Sgt. Thomas said that when he arrived at the apartment, officers had already entered the apartment. Sgt. Thomas learned from another officer (after that officer checked on their phone) that an order of protection existed barring § 87(2)(b) from entering the apartment and ultimately ordered officers to arrest § 87(2)(b) for violating the order of protection.

As noted above, § 87(2)(b) was arrested for criminal contempt in the first degree for violating an active order of protection (**BR 01, 26**).

The investigation received an order of protection § 87(2)(b) – that ordered § 87(2)(b) to stay away from § 87(2)(b) and her home (BR 27). This order of protection was not the original order of protection listed in § 87(2)(b)'s arrest report (BR 01) and does not list a specific address where § 87(2)(b) lived. The investigation was unable to obtain a copy of the order of protection that was active at the time of this incident.

Per *Payton v. New York*, 445 U.S. 573 (BR 28), police officers may make warrantless entries into an individual's home when consent is given.

§ 87(2)(g) § 87(2)(b) presented a full stay away order of protection prohibiting § 87(2)(b) from § 87(2)(b)'s home and § 87(2)(g) § 87(2)(b) had keys to allow officers into the apartment, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Force: Police Officer Adora Mojicabarry used physical force against § 87(2)(b)

Allegation (H) Force: Police Officer Paul Barth used physical force against § 87(2)(b)

In her CCRB interview (BR 11), § 87(2)(b) said that about two hours after he arrived, Sgt. Thomas told the other officers to arrest § 87(2)(b) for violating § 87(2)(b)'s Order of Protection. § 87(2)(b) heard the metal sound of handcuffs and turned the corner from the hallway just outside the bedroom into the living room, where she saw PO Marcus rear handcuffing § 87(2)(b). § 87(2)(b) did not resist in any way. As § 87(2)(b) was being handcuffed, § 87(2)(b) walked towards her from the direction of the bedroom to get clarification on why § 87(2)(b) was being arrested. PO Mojicabarry grabbed § 87(2)(b)'s right forearm and PO David grabbed her left forearm at the same time. These officers "yanked" § 87(2)(b)'s arms to hold her back, which pulled her left shoulder out of place (she did not receive medical attention for her injury but stated that she had pain in her left shoulder for three weeks). PO Mojicabarry and PO David told § 87(2)(b) that she could not walk over to where § 87(2)(b) was being arrested. § 87(2)(b) said to get off of her, which they did after a few seconds.

In her CCRB interview (BR 12), § 87(2)(b) said that she did not see any officer grab § 87(2)(b)'s arm, but an officer (she could not recall which one) told § 87(2)(b) to back up as § 87(2)(b) was being handcuffed.

The investigation was unable to contact § 87(2)(b)

Per PO Barth's BWC (BR 03), at the 41:09 timestamp, § 87(2)(b) walks past PO Barth towards where § 87(2)(b) is being arrested in the next room. At the 41:13 timestamp, PO Mojicabarry holds § 87(2)(b) with both hands and stands between her and § 87(2)(b) but § 87(2)(b) continues to try to walk around her. At the 41:26 timestamp, PO Mojicabarry holds § 87(2)(b) back with her right arm, and at the 41:28 timestamp, PO Mojicabarry grabs § 87(2)(b)'s right bicep as § 87(2)(b) says she wants to talk to § 87(2)(b). At 41:29, PO Barth briefly holds § 87(2)(b)'s right arm with his left hand. At no point does § 87(2)(b)'s shoulder appear to be dislocated and she does not complain of injuries.

In his CCRB interview (BR 13), Sgt. Thomas said that there was no struggle during the handcuffing, no physical force used, and nobody's arms were yanked behind their back in a way that could have dislocated a shoulder.

The investigation determined that additional interviews would be unnecessary, as they would not affect the dispositions of these allegations.

Per *Patrol Guide Procedure 221-01* (BR 14), members of service must consider the following criteria regarding the reasonable use of force: the nature and severity of the

crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the MOS; subject's violent history, if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(b) approached § 87(2)(b) while officers handcuffed the latter. § 87(2)(b)

(g)

Allegation (I) Abuse of Authority: Sergeant Michael Thomas threatened to arrest individuals.
Allegation (J) Abuse of Authority: Sergeant Michael Thomas threatened to arrest § 87(2)(b)

Allegation (K) Abuse of Authority: Sergeant Michael Thomas threatened to notify Administration for Children's Services.

In her CCRB interview (BR 11), § 87(2)(b) said that as Sgt. Thomas spoke to § 87(2)(b) he looked over at § 87(2)(b) and said, "At this point, I'm ready to call ACS and have everyone in the apartment arrested, because this is too much." § 87(2)(b) interpreted this to be a threat to arrest her, since she and her son, § 87(2)(b) were the only ones left in the apartment. Sgt. Thomas did not say why he would call ACS.

In her CCRB interview (BR 12), § 87(2)(b) said that § 87(2)(b) was being "rude and disrespectful," and that one of the officers (she could not recall which one) told § 87(2)(b) that if she could not "contain" herself, she would be arrested and ACS would be called for her son.

Per Sgt. Thomas' BWC (BR 10), at the 30:49 timestamp, he approaches the doorway from the hallway behind PO Mojicabarry. Inside the apartment, § 87(2)(b) yells (in reference to § 87(2)(b)) "If she walks through that door and y'all gone, it's going to be a problem." § 87(2)(b) is not present when § 87(2)(b) makes this statement. At 30:58, Sgt. Thomas says, "So we're going to arrest everybody." At 39:42, he says (in reference to § 87(2)(b) who is standing several feet away inside the apartment), "This lady over there, if she still antagonizes, she's going to go to jail immediately, and I'm gonna call ACS, and I'm gonna make sure that everything is not going to work the way that she wants."

In his CCRB interview (BR 13), Sgt. Thomas stated he did not have any independent recollection of threatening anyone with arrest, though he was worried about the potential for violence due to the yelling and screaming. He also had no independent recollection of mentioning ACS.

Upon reviewing his BWC, Sgt. Thomas said that he recognized his own voice saying that he would arrest everyone at 30:58 timestamp. He did not have any independent recollection of threatening anyone with arrest and did not know of anything anyone could have been arrested for other than the order of protection. Sgt. Thomas noted that he said he might have had to call ACS because a child was present, though he did not know the child's relationship to the other people in the apartment. He was saying he would have had to call ACS if the situation had become violent or dangerous.

Sgt. Thomas admitted that the only thing that someone could have been arrested for was violating the order of protection, and § 87(2)(b) was the only party to the order of protection.

§ 87(2)(g)

Per Penal Law 240.26 (BR 15), a person is guilty of harassment in the second degree when they engage in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

It is clear in BWC that § 87(2)(b) makes a veiled threat against § 87(2)(b) – "if she

walks through that door and y'all gone, it's going to be a problem." Sgt. Thomas later replied that if § 87(2)(b) "still antagonizes, she's going to go to jail immediately." § 87(2)(g)

Per Penal Law 260.10 (BR 30), a person is guilty of endangering the welfare of a child when he or she knowingly acts in a manner likely to be injurious to the physical, mental, or moral welfare of a child less than 17 years old.

Per Patrol Guide Procedure 215-01 (BR 16), upon determining that a child/minor requires care and/or shelter, officers are to first inquire if a relative or friend can provide care and shelter for the child. If a friend or relative is not readily available, officers are to notify that patrol supervisor and the Administration for Children's Services.

Per NYC Administrative Code 14-181 (BR 17), if no alternate caregiver is identified or the identified caregiver does not arrive at the scene of arrest in a reasonable amount of time, or if the child advocacy center or partner organization is unavailable, officers, should notify the administration for children's services.

Sgt. Thomas, said, in full, "This lady over there, if she still antagonizes, she's going to go to jail immediately, and I'm gonna call ACS, and I'm gonna make sure that everything is not going to work the way that she wants." The investigation determined that § 87(2)(b)'s conduct to that point did not present an immediate threat to the welfare of the child inside the apartment. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 18).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 19).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 20).
- PO Barth has been a member of service for six years and has been a subject in one prior CCRB complaint and two allegations, one of which was substantiated.
 - § 87(2)(g)
 - § 87(2)(g)
- PO David has been a member of service for nine years has been a subject in one prior CCRB complaint and allegation, which was not substantiated. § 87(2)(g)
- PO Dinsmore has been a member of service for seven years and has been a subject in one prior CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(g)
- PO Javorovac has been a member of service for three years and has been a subject in one other CCRB complaint and two allegations, neither of which were substantiated. § 87(2)(g)
- PO Marcus has been a member of service for six years and this was the first CCRB complaint to which he was listed as a subject.
- PO Mojicabarry has been a member of service for twelve years and has been a subject in a single CCRB complaint and allegation, which was not substantiated. § 87(2)(g)
- PO Saunders has been a member of service for six years and this was the first CCRB complaint

to which he was listed as a subject.

- Sgt. Thomas has been a member of service for 18 years and has been a subject in three CCRB complaints and four allegations, one of which was cited.

- § 87(2)(g), § 87(4-b)

- § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of August 31, 2022, the New York City Office of the Comptroller had received a Notice of Claim from § 87(2)(b) regarding this incident, claiming false arrest, false imprisonment, and malicious prosecution (BR 21-22). § 87(2)(b) claimed damages of emotional distress, loss of freedom, physical injury, and psychological distress, and claimed \$1,000,000 in redress. § 87(2)(b) The Office of the Comptroller had no record of any Notice of Claim being filed by § 87(2)(b) or § 87(2)(b)

- § 87(2)(b)

- § 87(2)(b)

- § 87(2)(b)

Squad: 10

Investigator:	<u>Ethan C. Waterman</u>	<u>SI Ethan Waterman</u>	<u>11/07/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Maura R. Roche</u>	<u>IM Maura R. Roche</u>	<u>11/07/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date